

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA



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Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.

Investigation 07-01-022
(Filed January 11, 2007)

In the Matter of the Application of Golden State Water Company (U 133 E) for Authority to Implement Changes in Ratesetting Mechanisms and Reallocation of Rates.

Application 06-09-006
(Filed September 6, 2006)

Application of California Water Service Company (U 60 W), a California Corporation, requesting an order from the California Public Utilities Commission Authorizing Applicant to Establish a Water Revenue Balancing Account, a Conservation Memorandum Account, and Implement Increasing Block Rates.

Application 06-10-026
(Filed October 23, 2006)

Application of Park Water Company (U 314 W) for Authority to Implement a Water Revenue Adjustment Mechanism, Increasing Block Rate Design and a Conservation Memorandum Account.

Application 06-11-009
(Filed November 20, 2006)

Application of Suburban Water Systems (U 339 W) for Authorization to Implement a Low Income Assistance Program, an Increasing Block Rate Design, and a Water Revenue Adjustment Mechanism.

Application 06-11-010
(Filed November 22, 2006)

Application of San Jose Water Company (U 168 W) for an Order Approving its Proposal to Implement the Objectives of the Water Action Plan

Application 07-03-019
(Filed March 19, 2007)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON PHASE 1A PROPOSED DECISION**

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**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure ("Rules"), the Division of Ratepayer Advocates ("DRA") submits these Reply Comments on the 1/15/08 Proposed Decision resolving Phase 1A settlement agreements and contested issues ("PD").

II. CLARIFICATIONS REGARDING DRA'S OPENING COMMENTS AND THE SUBURBAN WRAM

In its Comments on the PD, DRA recommended that the Commission specify that the Water Revenue Adjustment Mechanisms ("WRAMs") track revenues (more accurately, sales) by customer class.¹ DRA emphasizes that this recommendation regarding the trial programs relates solely to reporting, and not to how sur-credits or surcharges should be applied.

In addition, it is DRA's understanding that, in its Reply Comments on the PD, Suburban Water Systems ("Suburban") will recommend certain modifications (see Appendix) to the description of Suburban's WRAM for the reasons discussed in Suburban's Comments on the PD.² DRA agrees with Suburban's discussion of this issue,³ and with the modification in the Appendix to these Reply Comments.

III. THE NON-RESIDENTIAL RATE DESIGN FOR CWS IS IN THE PUBLIC INTEREST

While the PD adopts the conservation rate design settlements for Suburban and Park Water Company ("Park") in full, and adopts the conservation rates proposed for the residential customers of California Water Services Company ("CWS"), the PD rejects the proposed rate design for CWS' non-residential customers,⁴

¹ DRA Comments at 5.

² Suburban Comments at 8.

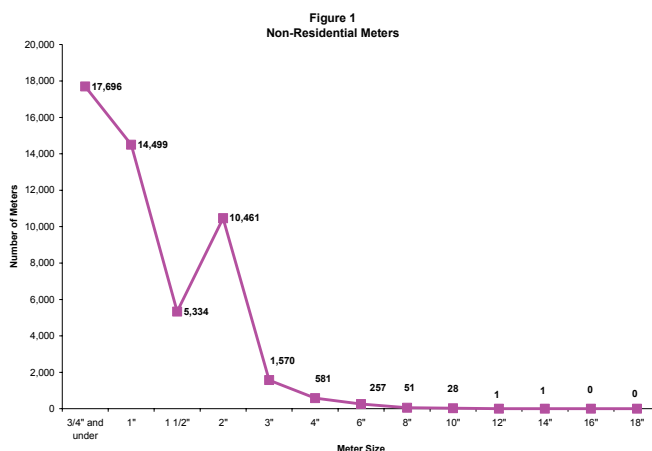
³ Suburban Comments at 8.

⁴ Amended Settlement Agreement Between The Utility Reform Network, The Division Of Ratepayer Advocates, And California Water Service Company (June 15, 2007) ("Amended Settlement"). For a description of the rate design for non-residential customers, see Amended Settlement at Section V, and the non-residential worksheet for each district in Attachments 1 and 2. In the Amended Settlement, modifications to the current rate design maintained revenue neutrality within each district, and within each residential or non-residential customer class. In most of CWS' districts, the proposed conservation rates would decrease the meter (or service) charges for non-residential customers and, as a result, increase the single quantity rate. Currently, the meter charges for non-residential customers vary by meter size within the district. The proposed conservation rates would lower each meter charge by a certain percentage that is held constant within each district (i.e., all of the meter charges for non-residential customers in a district would decrease by a uniform percentage). Under conservation rates, the meter charges thus continue to vary by meter size within each district.

For the quantity charges, however, a single quantity charge (as opposed to 2 or 3 tier quantity charges) is currently applied, in each district, to all of the non-residential customers in that district, regardless of meter size. Different districts nevertheless have different non-residential quantity charges. Under the proposed conservation rates, costs moved from the meter charge to the quantity charge results in an increase in the quantity charge. Rather than maintaining the same quantity charge for all non-residential customers in a district, however, the parties propose a different single quantity rate for a small number of "outlying" non-residential customers – those non-residential customers with meters 8" in diameter and over.

without prejudice, on the grounds that the parties have not provided the public interest showing required for the Commission to approve a settlement.⁵ In its Opening Comments on the PD, CWS addresses the concerns raised in the PD.⁶ DRA generally agrees with CWS' Comments and offers the following to supplement those comments.⁷

The PD observes that, in the proposed rate design, the lower quantity rate for eight-inch meters and larger, which “results in higher bills for smaller meter sizes,” is not explained.⁸ As CWS' Comments explain, a rate design change that is revenue neutral requires that some customers experience lower bills if other customers are to experience higher bills.⁹ The Parties lowered the quantity rate for eight-inches and larger meters for several reasons. First, the percentage of non-residential customers in CWS' districts that have such large meter sizes is very small.¹⁰ Figure 1, below, shows the total number of non-residential meters that CWS serves in all of its districts, by meter size:



⁵ The PD observes that, under the Amended Settlement:

Non-residential customers have varying meter sizes, rates were set depending on meter size, and the bill impact analyses show a resulting bill. However, average consumption for non-residential customers results in increases or decreases in monthly bills, depending on meter size. Some of that impact results from the decision to adopt a single quantity rate by meter size with a lower quantity rate for 8" meters and up. However, that lower rate results in higher bills for smaller meter sizes, for which no explanation is given. PD at 16-17.

⁶ CWS Comments at 2-10.

⁷ The proposed non-residential rate design for each district appears at the end of the worksheets for that district in Attachments 1 and 2 of the Amended Settlement. For the purposes of clarity, it is important to note that, in each non-residential worksheet, the Bill Impact Analysis table that appears on the bottom of the page does not reflect average consumption. While understandably confusing, the monthly consumption units used in the Bill Impact Analysis tables are not actually based on historical consumption in the district, but are instead illustrative examples that provide comparisons of how the proposed rates affect customer bills at different consumption levels and meter sizes.

⁸ PD at 17.

⁹ CWS Comments at 4.

¹⁰ See CWS Comments at 7-8 and Table 3 (specifying the number of meters that are 8 inches and more in 10 of CWS' districts).

As clear “outliers” in the distribution of non-residential meters, the disparate customers served by eight-inches or larger meters are likely to require more tailored conservation approaches. For example, customers with very large meter sizes are more likely to be industrial customers with usage patterns that vary widely. As a general matter, it is therefore more appropriate to first develop data about these customers’ consumption practices before crafting more aggressive pricing signals. Also, from a conservation perspective, it may well be more effective to focus on non-price conservation measures that are tied to the needs and abilities of each industrial customer.¹¹

The PD also observes that tiered quantity rates for non-residential customers “may be the most realistic process when 70% of revenues are already recovered through the quantity charge.”¹² However, DRA notes that, since the proposed conservation rate design for non-residential customers shifts additional fixed costs from the meter charge to the volumetric quantity charge, and CWS’ non-residential customers typically have higher usage, on a per-connection basis, than residential customers, the resulting charges from the volumetric rate generally make up a larger portion of their bills, compared to residential customers. A rate design that increases its reliance on the volumetric portion of the rate structure to recover greater amounts of fixed cost will therefore tend to send a stronger conservation signal to non-residential customers, than residential customers. In addition, it is particularly important to increase the conservation signals to non-residential customers gradually because, as a group, these customers (even if numerically limited) typically bear a significant portion of the fixed cost burden in a district. A dramatic decrease in the usage of non-residential customers in a district could thus adversely affect residential customers to the extent that residential customers would suddenly be required to bear a greater burden of the fixed costs in that district.

IV. THE PROPOSED DECISION’S ADOPTION OF SUBURBAN’S LIRA SETTLEMENT DOES NOT VIOLATE STATUTORY MANDATES OR PUBLIC POLICY GOALS

Intervenors incorrectly argue that the Proposed Decision violates statutory mandates and public policy goals by adopting the Suburban/DRA Low-Income Ratepayer Assistance Settlement (“LIRA Settlement”).¹³ Intervenors argue that, because Public Utilities Code (“PU Code”) § 739.8 contains separate subsections discussing conservation incentives and rate relief for low income customers, the Commission should not consider conservation when evaluating a low income rate relief proposal.¹⁴ However, this code section does not prohibit the Commission from considering the effects of a proposed low-income program on conservation, and the

¹¹ It is quite possible that a customer with an eight-inch meter will also be affected by the conservation pricing adopted for the smaller meters sizes because these customers are more likely to have multiple water connections, in various sizes, that serve different purposes. (A bottling plant may have a large connection with high usage for the processing functions of the plant, for example, and a smaller connection for a business office located on the same premises.) As a general matter, customers with multiple connections have greater ability to manage their usage.

¹² PD at 18.

¹³ Intervenors’ Comments at 1-6.

Commission would be remiss not to do so.¹⁵ Moreover, the Commission has previously found that a low-income program that provides a fixed discount is reasonable and consistent with PU Code § 739.8.¹⁶

A. There Is No Record Evidence Supporting Interveners' Allegations

Intervenors argue that the PD errs because it never addresses the issue of large-sized, low-income households and that such households use more water.¹⁷ Interveners, however, never offered any evidence to support their contentions regarding how, and in what quantity, low-income customers use water.¹⁸ Moreover, there is no evidence even defining what a large household is or how many of them exist.¹⁹ The Commission cannot assume that high usage by low-income customers is attributable to household size or that low-income customers never use water excessively and cannot conserve water unless some record evidence supports such conclusions.²⁰ It would be legal error for the Commission to reject the proposed LIRA Settlement based upon such unsupported assertions or to add Finding of Fact 24 as proposed by Interveners. The Proposed Decision appropriately states that it will consider the impact of the conservation rate design on LIRA customers and the issue of higher discounts on service charges for large households in Phase 2 of this proceeding.

V. SUBURBAN'S MEMORANDUM ACCOUNT PROPOSAL MUST BE DENIED TO THE EXTENT THAT SUBURBAN SEEKS COSTS INCURRED PRIOR TO A COMMISSION DECISION AUTHORIZING THE ACCOUNT

Suburban urges the Commission to modify the PD to approve Suburban's requested memorandum account for all expenses associated with this proceeding, claiming that such approval would not constitute retroactive ratemaking even if those costs were incurred prior to memo account authorization.²¹ Contrary to the express provisions of Rule 14.3(c), Suburban's comments on this issue merely reargue its case.²² The PD should continue to reject Suburban's arguments for the reasons set forth in DRA's previous pleadings.²³

(continued from previous page)

¹⁴ *Id.* at 6.

¹⁵ DRA notes that specific conservation measures will be addressed in Phase 2.

¹⁶ *Re San Gabriel Water Co.*, D.05-05-015.

¹⁷ Interveners Comments, p. 6.

¹⁸ Finkelstein/TURN, 1 RT 89

¹⁹ Finkelstein/TURN, 1 RT 99.

²⁰ DRA notes that under the Suburban Rate Design Settlement, the first tier of 20 ccf would meet the indoor water needs for family sizes up to 7 persons according to EPA estimates of average indoor water needs. DRA Opening Brief at 13.

²¹ Suburban Comments at 2-8.

²² *See, e.g.*, Opening Brief of Suburban Water Systems on Phase 1A Issues (August 27, 2007) at 4-13; Reply Brief of Suburban Water Systems on Phase 1A Issues (September 17, 2007) ("Suburban Reply Brief") at 16-21.

²³ *See, e.g.*, Opening Brief of the Division of Ratepayer Advocates on Phase 1A Issues (August 27, 2007) at 3-6; Reply Brief of the Division of Ratepayer Advocates on Phase 1A Issues (September 17, 2007) at 3-5.

Nevertheless, DRA takes this opportunity to address one argument reiterated in Suburban's Comments that appears to have been made for the first time in Suburban's Reply Brief. Suburban argues that "the Commission may find that Suburban's recovery of the expenses associated with this proceeding do not fit into the category of 'general ratemaking' and that retroactive ratemaking concerns need not bar their recovery."²⁴ Suburban cites *SoCalEd v. PUC*, in which the California Supreme Court determined that the Commission's requirement to return to ratepayers over-collections contained in the company's "fuel cost adjustment clause" did not constitute retroactive ratemaking.²⁵ The Court distinguished between "true ratemaking," and the fuel cost adjustment clause that effectively "authorize[d] Edison every few months to adjust its rates"²⁶ in what could be considered a "narrowly restricted and semi-automatic functioning" manner.²⁷

While the Commission action reviewed by the Court in *SoCalEd v. PUC* was the disposition of funds collected in an existing, "semi-automatic" cost tracking mechanism, Suburban asks here for authorization to create a new memorandum that would retroactively track previously incurred costs. These regulatory actions are clearly distinguishable; there is little, if any, legal and factual commonality between them. Thus, Suburban's reference to *SoCalEd v. PUC* is inapposite.

VI. CONCLUSION

With the modifications and clarifications discussed here and in DRA's Comments on the PD, DRA supports the PD as written.

²⁴ Suburban Comments at 8; Suburban Reply Brief at 20.

²⁵ *Id.* *SoCalEd v. Public Utilities Commission*, 20 Cal. 3d 813; 1978 Cal LEXIS 203.

²⁶ *Id.* at 829-30.

²⁷ *Id.* at 828. In concluding that adoption of the fuel cost adjustment clause was not "ratemaking," the Court determined that the Commission's mandate to give back over-collections "may well be retroactive in effect, but is not retroactive *ratemaking*." *Id.* at 830 (emphasis in original).

Respectfully submitted,

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APPENDIX

MODIFICATIONS TO PROPOSED DECISION

At page 29:

Suburban and DRA's WRAM proposal is consistent with the CalAm WRAM that has been in effect since 1996 and will address ~~make Suburban whole for~~ any changes in revenue resulting from adoption of conservation rates, assuming the same level of sales.¹

¹ This further modifies the proposed change in language recommended by Suburban in its Comments on the PD at Exhibit A.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **“REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON PHASE 1A PROPOSED DECISION”** in **I.07-01-022, et al.** by using the following service:

[X] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

[X] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses, if any.

Executed on **February 11, 2008** at San Francisco, California.

/s/	ROSEMARY MENDOZA
	ROSEMARY MENDOZA

N O T I C E

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